IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No. 19804 of 2004

Date of decision: March 7, 2007.

Surinder Pal Singh

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

Present: Mr.Sanjiv Gupta, Advocate for the petitioner.
Mr. Jitender Chauhan, Addl. Advocate General, Haryana
for the respondents-State.

JUDGMENT

M.M.Aggarwal, J.

Surinder Pal Singh petitioner was appointed as Ticket Verifier on 1.7.1994 on daily wages. His appointment was for one month but it continued from time to time. Then there was a Policy dated 1.10.2003 [copy Annexure P-9] of the Haryana State to regularise services of ad hoc or employees working on daily wages. The conditions laid down in that policy were that employees should have completed three years service as on 30th September, 2003 but if there was break in service of not more than six months and it was for no fault attributed to that employee then,it may be condoned but where it was due to the fault of the employee then it may not be condoned if it was for

more than 30 days.

Transport Commissioner Haryana, however, had passed order dated 4.10.2004 [copy Annexure P-16] and did not regularise services of the petitioner as he had remained absent for 611 days with effect from 15.8.2001 to 17.4.2003 and General Manager, Panipat had written that he was not entitled for regularisation. Then this petition was filed challenging order dated 4.10.2004 copy Annexure P16 whereby services of the petitioner were not regualrised in view of the Government Instructions dated 1.10.2003.

On behalf of the petitioner, reliance was placed on order dated 29.12.2003 copy Annexure P-7 of General Manager, Haryana Roadways, Panipat, whereby petitioner had been charge-sheeted for remaining wilfully absent for quite long time and then enquiry officer was appointed and charges were found to be correct. Then periods of absence i.e. from 28.6.2001 to 1.7.2001, 22.7.2001 to 24.7.2001, 15.8.2001 to 17.4.2003 were directed to be treated leave without pay and leave for that period was sanctioned.

Counsel for the petitioner argues that once that was done, then it could not be said that there was break in service. It was also argued that now another order dated 8.1.2007 (copy Annexure P-21) was made to discontinue services of the petitioner even as daily wager, which was illegal as Junior to the petitioner had been retained.

On behalf of the respondents-State, it was argued that order dated 29.12.2003 copy Annexure P-7, whereby leave of the petitioner was sanctioned, was not made by the competent authority and even if leave had been sanctioned that will not condone the fact that petitioner had remained absent for 611 days and, as such, was not entitled to regularization in terms of

Government Instructions dated 1.2.2003.

Counsel for the petitioner had relied on Full Bench judgment of this Court reported in **Tek Chand Vs. State of Haryana 2002(1) SCT 308,** Division Bench judgments of this Court reported as **Umed Singh Vs. State of Haryana and others, 2001(1) RSJ 752, Baldu Ram and others Vs. State of Haryana and others 2000(2) RSJ 160 and State of Haryana and others Vs. Ramesh Chand 2000(1) RSJ 429 and** Supreme Court judgment reported in **Gujarat Agricultural Univesity Vs. Rathod Labhu Bechar and others 2001 (1) RSJ 770** but I find that these judgments will not be applicable to the facts of the present case.

Here is the case where, vide Instructions of the Government dated 1.10.2003, services of ad hoc or daily wage employees were directed to be regularized on certain conditions.

Petitioner was a daily wage employee. He remained absent for 611 days. Even if his leave had been sanctioned for that period without pay, still while considering the case for regularization, the Transport Commissioner was to look into the fact whether petitioner had remained absent. Petitioner di not fulfil the conditions prescribed in Govt. Instructions dated 1.10.2003 where it was provided that where break in service or absence had been for not more than six months due to no fault of the petitioner, then it may be condoned but when it was found that absence had been for a period of 611 days, then Transport Commissioner found it a fit case not to condone the absence and did not regularise the services of the petitioner.

When services of the petitioner were not regularised and he continued working as daily wage employee, then he could be relieved from the

post as and when services were not required. Order dated 8.1.2007 of Transport Commissioner Haryana shows that there were 11 posts of Ticket Verifiers in Panipat which were all filled up. Then there was no requirement of Ticket Verifier beyond the sanctioned strength. Therefore keeping petitioner as ticket verifier on daily wage basis, was unjustified and his services should be discontinued. As such, the order was passed and petitioner was relieved.

The Transport Commissioner while regularizing the services of the petitioner had taken all the facts and circumstances into consideration and had found that petitioner was absent for 611 days and, therefore, his services should not be continued. Merely because leave for that period had been sanctioned by General Manager, Panipat, does not mean that absence had been condoned especially when that was without pay. So, it cannot be said that petitioner had been discriminated.

In the facts and circumstances of the case, no direction can be issued to the respondents-State for regularizing the services of the petitioner and now when he has been relived from the post of Ticket Verifier as daily wager, he is not entitled to any relief from the Court. As such, this petition is dismissed.

(M.M.Aggarwal)
Judge

March 7, 2007
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